

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UTHAIWAN WONG-OPASI,)
v. Plaintiff,)) No. 3:04-0646
RICHARD R. ROOKER, et al.,)) JUDGE ECHOLS
Defendants.)

ORDER

Pending before the Court is the Report and Recommendation ("R & R") entered by the United States Magistrate Judge on November 7, 2005 (Docket Entry No. 67), recommending that this Court grant Defendants' Motion to Dismiss (Docket Entry No. 49) because of Plaintiff Uthaiwan Wong-Opasi's failure to state a claim against them. See Fed.R.Civ.P. 12(b)(6). No objections have been filed.

Long after the ten-day period for filing objections passed, Plaintiff filed on December 13, 2005, a "Notice of Temporary Absence." Plaintiff states in the Notice that she will be temporarily out of the jurisdiction beginning December 13, 2005, for "rehabilitation," which may take approximately one and one-half months. Plaintiff did not request an extension of time in which to file any objections to the R & R. Her "Notice of Temporary Absence" does not preclude the Court from proceeding to rule on the pending Motion to Dismiss.

Where no timely objections are made to a Report and Recommendation, the Court "may accept, reject, or modify the recommended decision, receive further evidence, or recommit the

matter to the magistrate judge with instructions." Fed.R.Civ.P. 72(b).

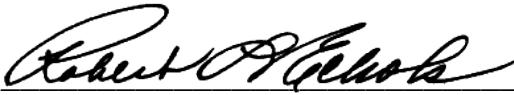
Having carefully reviewed the R & R, the Defendants' Motion to Dismiss, and Plaintiff's opposition to the Motion to Dismiss (Docket Entry Nos. 56 & 57), the Court agrees with the Magistrate Judge that, even taking as true all of the facts included in the Complaint, Plaintiff fails to state a Fourteenth Amendment claim against the Defendants for denial of access to the courts under 42 U.S.C. § 1983. Although the R & R suggests dismissing the case without prejudice, the Court will modify the R & R to the extent that dismissal of the case will be with prejudice. See Pratt v. Ventas, Inc., 365 F.3d 514, 522 (6th Cir. 2004) (noting dismissal for failure to state claim under Rule 12(b)(6) is judgment on the merits and is done with prejudice).

Accordingly, the Magistrate Judge's R & R (Docket Entry No. 67) is hereby ACCEPTED AS MODIFIED. Defendants' Motion to Dismiss is hereby GRANTED. (Docket Entry No. 49).

This case is hereby DISMISSED WITH PREJUDICE.

Entry of this Order on the docket shall constitute entry of final Judgment in accordance with Federal Rules of Civil Procedure 58 and 79(a).

It is so ORDERED.



ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE